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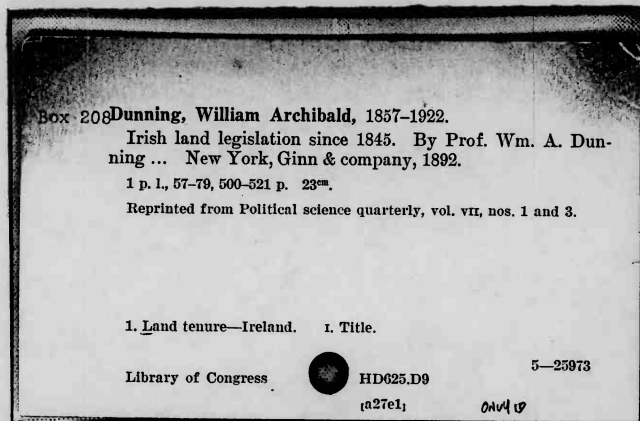
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IRISH  
LAND LEGISLATION  
SINCE 1845.

BY  
PROF. WM. A. DUNNING.

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Reprinted from POLITICAL SCIENCE QUARTERLY, Vol. VII, Nos. 1 and 3.

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## IRISH LAND LEGISLATION SINCE 1845. I.

IN the year 1843, Ireland was entirely under the sway of Daniel O'Connell and the Repeal Association, and the functions of the lawful government were practically suspended. Among the sources of discontent which had contributed to produce this situation, the relations of landlord and tenant were recognized as having played an important part. In October, the government broke by brute force the power of O'Connell; but previously to that, in the House of Commons, the prime minister, Sir Robert Peel, had prepared the way for this action by announcing his readiness to consider some of the chief complaints of the Irish people, among them the relations of landholders and tenants. A royal commission was appointed, under the presidency of the Earl of Devon, to report on the law and practice in reference to land tenure in Ireland, with suggestions of any desirable amendments in existing law. With the report of this commission, submitted in 1845, the land question assumed a distinct position in Irish politics which has grown steadily in importance to the present day.

### I. *The Situation in 1845.*

The poverty and wretchedness of Ireland's agricultural population had been familiar facts from even earlier than the time of Swift's *Modest Proposal*. Since the accession of George III secret organizations for agrarian outrage and insurrection had followed one another in unbroken succession. In the view of the English governing class, still enveloped in prejudices of the seventeenth century, the misery of the Irish was due solely to their inherent shiftlessness, the frequent outrage and rebellion to their ineradicable depravity. In 1801 the care of Irish affairs fell more directly into the hands of the British through the Act of Union. From that date laws conferring extraordinary

powers for the suppression of crime had been numerous; laws for ameliorating the condition of the peasant's lot had been almost unknown. On a number of occasions, in times of exceptional and wide-spread distress, select committees had reported on special phases of the situation. The intensity of the wretchedness was emphasized by all, but the remedies suggested had been in general on other lines than that of modification in the legal relations of landlord and tenant. Encouragement to the reclamation of waste land, emigration and other means of relief from the evils of a redundant population were the measures most favorably mentioned, but even these had rarely received the sanction of law.<sup>1</sup>

The importance of the Devon Commission's report lies in the extraordinary thoroughness of the investigation upon which it was based, and in the attention which it paid to the legal as contrasted with the economic side of the land question. The commissioners were all landlords, and the distrust with which the Irish regarded them is perfectly expressed in the comment of O'Connell: "You might as well consult butchers about keeping Lent as consult these men about the rights of farmers."<sup>2</sup> Nevertheless, the Irish agitator himself could not have contributed more to his cause than did these landlords, when they made most prominent in current discussion the moral and legal rights of the tenant farmer instead of his social and economic delinquencies. As the victim of injustice in property rights he could appeal far more effectively to British sentiment than as the victim of his own incompetence in agriculture and his own shiftless neglect of the Malthusian law.

The census of 1841 showed that of the 1,472,739 families in Ireland, over 1,200,000 lived outside of towns numbering 2000 inhabitants, and of this rural population 491,809 families occupied mud cabins of but one room.<sup>3</sup> Sixty-six per cent of the total population were engaged chiefly in agriculture, and sixty-

eight per cent of the rural element had no means of support other than their own manual labor. In this last class are included all so-called "farmers" on holdings of less than five acres. These figures are eloquent as to the social conditions which the Devon Commission had to confront. Its first general conclusion was that an increased and improved cultivation of the soil was the most important requisite for the improvement of the people. A tendency to such improvement seemed to the commissioners to exist among the farmer class; but the great mass of agricultural laborers were considered to have no prospects of bettering their condition. The commission in its report then took up and considered in order the chief subjects of complaint and controversy in connection with the occupation of land. A summary of its discussion will furnish the best possible basis for the later history of the question.

First, as to tenure. The commission investigated particularly, in the first place, the general character of the landlords' interest in their land, and found a source of many evils in the extent to which the nominal proprietors were hampered by family settlements and other burdens imposed upon the land by former owners. As to occupiers' tenure, the custom of the Ulster counties known as "tenant right" was considered the most striking phenomenon. According to this custom, a tenant, upon leaving his holding for whatever cause, claimed the privilege of exacting from his successor a sum of money running up to ten or fifteen years' rent. Practically the tenant sold his right of occupancy, subject only to the landlord's approval of the purchaser and of the amount paid. From this custom, the commission declared, a feeling of proprietorship had grown up in the tenants which was wholly anomalous in reference to ordinary notions of property. Much danger to "the just rights of property" was anticipated from the extension of this "tenant right," though in a modified form its results seemed beneficial. Apart from this particular custom, most of the land in Ireland was occupied under terminable leases or by tenants from year to year. Leases in general appeared to be unpopular and the majority of occupiers were essentially tenants at will. The "want of

<sup>1</sup> For a review of previous reports, see Devon Commission's Report, Parliamentary Papers for 1845, vol. xix, p. 8 *et seq.*

<sup>2</sup> Shaw Lefevre, Peel and O'Connell, p. 234.

<sup>3</sup> Parliamentary Papers, 1843, vol. xxiv, p. xiv *et seq.*

tenure" was the most general topic of complaint to the commission in all parts of Ireland, and the commissioners were convinced that in many instances it was a fatal impediment to improvement.<sup>1</sup>

Second, as to improvements. It was pointed out under this head, as an important but unfamiliar fact, that in Ireland this word was employed to denote dwelling-houses, farm buildings and even the making of fences. "These necessary adjuncts of a farm, without which, in England or Scotland, no tenant would be found to rent it,"<sup>2</sup> were in Ireland all contributed by the tenants. This fact, taken in connection with the general uncertainty of tenure, made apparently a most profound impression upon the commission.

Third, as to consolidation of farms. For twenty-five years, at least, the movement in this direction had been a conspicuous feature of agricultural history in Ireland. Its causes were partly economic, partly political. The fruits it had borne were most conspicuous in the annals of poor relief and of agrarian crime. Select committees had already recognized the "clearance" system as a most prolific source of disturbance among the Irish peasantry, but had endorsed the landlord's plea that it was only the painful remedy of a more painful disease; that sub-division and over-population of the land had extended to a point that was unendurable. Standing on the "just rights of property," the landlords had reformed the agricultural system. Standing on an assumed right to live, the evicted tenantry had organized Ribbon societies and shot the landlords. The Devon Commission considered that the recent instances of consolidation had been comparatively few, and that the landlord's motive in the matter was in general to increase the size of the holdings, with a view to better cultivation of the land. While admitting the misery entailed by clearances on thickly peopled estates, the commission could suggest no remedy other than humane procedure on the part of the landlords.

<sup>1</sup> For ten years past Mr. Sharman Crawford had been calling attention, both in and out of Parliament, to the connection between the uncertainty of the tenant's occupancy and his disinclination to improve his holding.

<sup>2</sup> Report, p. 16.

Fourth, as to recovery of rent. The methods of procedure open to the owner against a defaulting tenant were practically two: distress and action for ejectment. Both were subjects of incessant complaint on the part of the tenantry. It was asserted that the legislation regulating the matter had been enacted solely in the interest of the landlords. Distress had been made a more effective instrument than it was originally, by statutes giving the landlord the right to sell the goods seized, and also the right to seize growing crops.<sup>1</sup> Ejectment, originally available only through expensive proceedings and in case of a lease containing a clause of re-entry, had been by successive laws made cheap and of much wider application, especially in tenancies where the rent did not exceed £50 annually.<sup>2</sup> The commissioners believed that neither of these remedies could be abolished without injury to "the just rights of property." Some modifications in the laws were suggested, however, notably the abolition of the right to distrain growing crops.

Fifth, as to the sale of estates. It was believed by the commission that there was a large number of people in Ireland able and willing to become landowners on a small scale, if an opportunity were given. The desirability of such an addition to the proprietorship of the island was unquestionable. But an insuperable obstacle was the fact that estates were so generally encumbered by family settlements and otherwise, that dividing and selling them piecemeal was a hopelessly difficult and expensive task.

Sixth, as to agricultural laborers. This was the most numerous and the most wretched class of the population. Lack of employment seemed to be the fundamental source of their misery. The custom of conacre—letting a small piece of land for one or two crops only—was the subject of general condemnation by all men acquainted with its effects both upon the laborers and the land. But the commissioners thought that it was almost essential to the existence of the laborer. Unable either to take a permanent holding or to live on his wages, he obtained

<sup>1</sup> Montgomery, *Land Tenure in Ireland* (Cambridge University Press, 1889), p. 99.

<sup>2</sup> Report of the Devon Commission, p. 23.

from some farmer by conacre the opportunity of at least raising enough potatoes to keep life in his body. But in general he paid enormously for the privilege, and the commission approved the practice adopted by some landlords of setting aside small allotments, with decent cabins, for the laborers on their estates.

Such were the more conspicuous features of the land question in Ireland in 1845. The Devon Commission was in general quite impartial in its presentation of the facts. In its recommendations it well reflected the general trend of what was then the rather progressive element of English thought. Nothing more clearly shows the character of this thought than the frequent recurrence in the report of the phrase, "the just rights of property," and the repeated refusal, after the presentation of serious evils, to recommend legislative intervention for their removal. The most important of the changes it approved in the laws affecting the occupation of land were as follows:

1. A number of measures designed to facilitate the conversion of uncertain tenancies into leaseholds or proprietorships; *e.g.* the extension of leasing powers to holders for life and to corporations, the reduction of the stamp tax on leases, and legislation to encourage the sale of incumbered estates.

2. Laws looking to the stimulation of improvements: on the landlord's side, by enabling limited owners to charge upon the estate the cost of works calculated to be of permanent value to the property; on the tenant's side, by securing to him the long-sought "compensation for improvements." In reference to this latter subject the commission displayed real earnestness; but this feeling did not lead them to lose sight of the landlord's interest. They would permit, first, the registration of an agreement between landlord and tenant as to the character and cost of the improvements to be made, this to be enforceable in the courts. Second, in case no agreement could be reached, the tenant should be enabled to serve notice of proposed improvements — such as buildings and fences — upon the landlord, and to have their suitability and maximum cost fixed by arbitrators and the court; then, in case of ejectment or increase of rent, the tenant should be entitled to compensation within the maximum fixed.

3. The extension of the practice already in vogue, of advancing public funds by way of loan to private persons for agricultural improvements, and to public corporations for useful works.

With the efforts to carry out such moderate recommendations as these, the history of progressive land legislation begins. The time that has elapsed since 1845 may be divided into three pretty clearly marked periods: (1) 1845–1865, during which all legislation in reference to the land question proceeded from the standpoint of the landlord and was governed by the English notions of his absolute ownership; (2) 1865–1885, the years of transition, in which it was sought to give a general legal recognition to the tenants' interest in the land, while still retaining landlords' rights; (3) 1885–1891, in which all attention has been concentrated on the conversion of the tenant into a proprietor.

## II. *Legislation based on the Principle of Absolute Ownership by the Landlord.*

This period opens with the demoralizing years of the great famine. Between 1845 and 1850 starvation and disease wrought the most complete social disorganization throughout Ireland. A ghastly but effective solution was reached of many problems incident to over-population. The work begun by hunger and pestilence was carried on by emigration, and landlords and government eagerly stimulated this movement, which was destined to react so unpleasantly on both in the future.

The dreadful incidents of the famine years attracted general attention to the condition of Ireland, and in the discussion of the evils and their remedies, the land question assumed great prominence. To the changes in the actual situation due to death and voluntary emigration, were added those resulting from the policy of consolidation of farms, which many landlords believed themselves justified in adopting. The "clearances" which this consolidation involved furnished an abundant crop of pathetic incidents, and stimulated in a large degree the agitation for tenant right that covered the years from 1850



to 1854. The net result of all the complications of the famine period was a wide-spread conviction that something must be done in the matter of Irish land law. In determining what line of action should be taken, the suggestions of the Devon Commission were always referred to by both Whig and Tory governments. And of these suggestions, that concerning compensation to tenants for improvements was considered the most promising subject for action.

Throughout the whole period under consideration, an almost uninterrupted series of bills dealing with land law were presented to Parliament by Irish members. These continued, at first, the long familiar demand for compensation for improvements, but after the famine the usual proposal was the recognition and extension of the Ulster tenant right. The government, however, never got beyond the idea of compensation. To realize this idea, bills were brought forward by Sir Robert Peel's ministry in 1845, by Lord Russell's in 1846 and 1848 and by Lord Derby's in 1852. The fundamental principle in each was the absolute property-right of the landlord in his estate. Lord Stanley, in introducing the bill of 1845, took pains expressly to disclaim any intention (1) to give tenants fixity of tenure against the landlord's will, (2) to interfere with the landlord's discretion about granting leases, or (3) to interfere in any way with the amount of rent the landlord might exact.<sup>1</sup> All that was proposed was to secure to the tenant as absolute a right to the capital he invested in improvements as the landlord had to the economic value of his land. But while the owner's power of arbitrary eviction was a standing menace to the tenant's property right in his improvements, it was promptly pointed out that the occupier's power of arbitrary improvement was in equal degree threatening to the landlord's interest in his land. Good landlords as well as bad stood aghast at the results that would ensue, if every ignorant tenant of a five-acre plot should have by law the right to work out his conception of "improving" the holding and then to charge the landlord for it. The abstract justice of compensation was not

<sup>1</sup> Hansard, 3d series, vol. lxxxi, p. 221.

disputed, but the determination of what should constitute an improvement was a vexatious matter.

In meeting this difficulty two methods were employed in the various government propositions: first, the enumeration and definition of works for which compensation could be claimed; second, the institution of machinery for determining the beneficial character of the enumerated works in each particular instance. The bill of 1845 enumerated but three improvements, buildings, drainage and the levelling of "fences";<sup>1</sup> that of 1846 was confined to the first two of these;<sup>2</sup> that of 1852 added the reclamation of waste land, the clearing away of rocks and the building of fences.<sup>3</sup> For determining the utility of proposed improvements Stanley's bill in 1845 provided a government office, headed by a commissioner of improvements, whose approval of the work done would entitle the tenant to compensation. It was this provision that killed the bill. The most violent protests came from the Lords against such interference with the rights of property.<sup>4</sup> It would enable an occupier and a government official to make alterations in a landlord's estate without the owner's consent, and then, in addition, make him pay for the injury. This was sheer confiscation. Lord Stanley protested that the object was merely to get a cheap and impartial tribunal to fix the compensation, and asked if the landlords would be better satisfied to leave their case to a local jury.<sup>5</sup> But though the bill passed its second reading in the Lords, it was sent to a select committee, whence it never came forth.<sup>6</sup> The Earl of Lincoln's bill (1846) provided first for a voluntary agreement between tenant and owner, securing compensation or increased rent according as the improvement was effected by the one or the other; and second for "compulsory agreement,"

<sup>1</sup> These were the great earth banks characteristic of some parts of Ireland even at the present day. Stanley estimated that they occupied generally about twenty per cent of the land in each farm, and did not prevent the ingress or egress of any living being. Hansard, vol. lxxxi, p. 223.

<sup>2</sup> British Parliamentary Papers, 1846, vol. ii, Landlord and Tenant (Ireland).

<sup>3</sup> *Ibid.* 1852-53, vol. viii, Tenants' Improvements Compensation (Ireland).

<sup>4</sup> See protest of thirty-six peers owning land in Ireland. Hansard, vol. lxxxi, p. 1119.

<sup>5</sup> Hansard, vol. lxxxi, p. 1142 *et seq.*

<sup>6</sup> *Ibid.* vol. lxxxi, p. 493.

under which, at the tenant's instance, the suitability of proposed alterations should be decided by arbitration. Here the court was brought in to appoint an arbitrator to represent the landlord, if the latter refused to name one. Sir William Somerville's proposition (1848), as originally submitted, contained the arbitration scheme, to which a select committee added Stanley's government commissioner as a resource in case the arbitrators failed to agree.

It was evident after the discussion of these bills that the vaunted principle of compensation for improvements was not so easy of application as had been supposed. The originators of the idea had intended simply to assure to the tenant the power to cultivate his holding in the most effective way without suffering ultimate loss. With the complicated machinery which tenderness for the landlord's rights made inevitable, the friends of the tenant felt that all stimulus to improvement was lost. Their attention was diverted to projects for legalizing and extending the Ulster custom which had figured so extensively in the Devon Commission's report, while the landlord interest turned to a consideration of measures to facilitate improvement by the owners themselves. By 1852, the tenant-right agitation had attained such headway that Lord Derby's government undertook to check it by a wide scheme of land-law reform. One feature of this scheme was Napier's compensation for improvements bill. In this, however, the vital question of landlord's rights found no new solution; Stanley's government commissioner was again the ultimate authority as to the suitability of the improvement, and the same elaborate processes of notification and inspection and registration were inserted to paralyze the progressive cultivator. There were some new provisions more favorable to the tenant, in particular one that brought past as well as future improvements within the scope of compensation. That was in the landlords' eyes confiscation absolute,<sup>1</sup> but some concession had to be made to the threatening spectre of tenant right. Lord Derby's government

<sup>1</sup> Mr. Napier complained bitterly in the House that he had been charged with communistic principles. Hansard, vol. cxlii, p. 154.

fell, however, before the measure could obtain complete legislative action, and under the new administration the compensation bill was thrown out by a Lords' committee.<sup>1</sup> Not till 1860 was the idea of compensation for tenants' improvements again taken up by the government. In that year, in the midst of an act offering incentives to owners to improve, provisions were inserted which affected the tenants also.<sup>2</sup> For certain enumerated works, undertaken with the consent of the landlord, agricultural occupiers were given an annuity of  $7\frac{1}{2}$  per cent on their outlay, to be collectible, however, only in case of eviction, and then to run for the unexpired part of a term of twenty-five years from the date of the expenditure. Such was the result of twenty-five years of struggle for tenants' compensation. The landlord's conception of his interest in the soil remained intact. His consent must be obtained for any alteration on his estate, his power of arbitrary eviction remained unaffected, his liability to the tenant ceased with a fixed term, and all past improvements were left absolutely his. Against each of these principles the friends of the tenants' cause had for years been committed to uncompromising hostility. Mr. Cardwell, who had charge of the bill, defended it only on the ground that any more sweeping reform was hopeless of success.<sup>3</sup>

But while this rather inadequate result had been reached in providing a stimulus to the tenants to improve, the recommendations of the Devon Commission in reference to facilitating improvements by the landlords had been more fruitful. The report had dwelt especially upon the importance, first, of enabling limited proprietors to charge permanent improvements upon the estate; and second, of providing some practicable means by which owners whose estates were hopelessly burdened by incumbrances might dispose of their land to purchasers who could with a clear title devote capital to improvements. A bill designed to carry out the latter suggestion was passed with little opposition in 1848,

<sup>1</sup> Hansard, vol. cxxxiii, p. 516. The Lords passed a Landlord and Tenant Bill containing a clause granting compensation for buildings, but it was dropped by the government in the House of Commons. Hansard, vol. cxxxv, p. 196.

<sup>2</sup> 23 and 24 Vict. c. 153.

<sup>3</sup> Hansard, vol. cxlii, p. 1553 *et seq.*

and is known as the Incumbered Estates Act.<sup>1</sup> A cheap and simple process was provided by which, under the oversight of the Court of Chancery, a burdened estate could be sold and the money apportioned among those having interests in it. To the purchaser was given a Parliamentary title.<sup>2</sup> It was expected that by this act a large body of new landlords would be introduced into Ireland, and that these, being provided with sufficient capital and sufficient progressiveness, would make a decided change in the general agricultural situation. The first of these expectations was fulfilled;<sup>3</sup> as to the second, there has been much controversy.

But by far the most ambitious attempt to settle the land question from the standpoint of the landlord was that expressed in the two acts of 1860. The first of these, commonly known as Cardwell's Act,<sup>4</sup> dealt with the whole question of improvements under three heads—landlords' improvements, leasing powers and tenants' improvements. The last of these I have just described. The first part carried out the recommendation of the Devon Commission in reference to limited owners. Under the sanction of the Landed Estates Court, such owners were authorized to make specified improvements and to become entitled by such action to an annuity of  $7\frac{1}{8}$  per cent for twenty-five years, chargeable upon the estate. An elaborate machinery of notification, registration and official sanction was provided to protect the interests of the successor. The part of the act relating to leasing powers was also devised in accordance with a recommendation of the Devon Commission. Encouragement to leases had long been a favorite proposition with those who wished to remedy the evils of the yearly tenancies which were characteristic of Ireland. By Cardwell's Act various limited owners, including public and private corporations, were authorized to grant leases, to be distinguished as agricultural, improvement and building leases. The improvement lease bound

<sup>1</sup> 11 and 12 Vict. c. 48.

<sup>2</sup> For a statement of the objects and provisions of the bill, see Hansard, vol. c, p. 94.

<sup>3</sup> By April 1, 1853, 2811 conveyances had been executed under this act, involving an investment of £8,799,917. British Parliamentary Papers, 1852-53, vol. xciv.

<sup>4</sup> 23 and 24 Vict. c. 153.

the lessor to effect specified agricultural improvements in his occupancy, and the building lease required the erection of certain structures. Here, as in the other parts of the bill, the supervision of the courts was made very complete, in order to protect the interests of the estate.

The other law of 1860 dealing with the land question was that known as Deasy's Act.<sup>1</sup> The Devon Commission and many persons since its time had pointed out the great confusion that existed in the whole subject of land law in Ireland. A consolidation act had been one of the features of Lord Derby's scheme in 1852. Since the great transformation wrought by the famine, and especially under the successful workings of the Incumbered Estates Act, it had become a common idea that a simplification of legal relations was all that was needed to make Ireland happy. Brush away, it was said, all the relics of feudal conceptions that complicate the status of both landlord and tenant, and let everything stand on the simple basis of definite agreement between the owner and the cultivator of the soil.<sup>2</sup> The new proprietors who had become possessed of 2,000,000 acres of Irish land were chiefly Irish capitalists,<sup>3</sup> who were animated by the purpose to make the most out of their investments. Their business instincts, if allowed full play by law, would do more for the agricultural development of Ireland than would ever be possible under the restrictions of the existing system. In accordance with this line of reasoning, Deasy's Act was based on the explicit declaration that

The relation of landlord and tenant shall be deemed to be founded on the express or implied contract of the parties, and not upon tenure or service, and a reversion shall not be necessary to such a relation, which shall be deemed to exist in all cases in which there shall be an agreement by one party to hold land from or under another in consideration of rent.<sup>4</sup>

It was in the spirit of this clause that the whole code was

<sup>1</sup> An Act to Consolidate and Amend the Law of Landlord and Tenant in Ireland. 23 and 24 Vict. c. 154. Sometimes also known as Cardwell's Act.

<sup>2</sup> This reasoning appears frequently in the debates on Napier's bills in 1852-54. Cf. Hansard, vol. cxxii, p. 7, 18 *et passim*.

<sup>3</sup> Hansard, vol. clvii, p. 1556.

<sup>4</sup> 23 and 24 Vict. c. 154, sec. 3.

drawn up and the existing law amended. At the instance of Irish members some clauses were inserted giving the tenant the right to remove agricultural fixtures at the end of his tenancy,<sup>1</sup> and certain limitations were put upon the remedy of distress against the tenant for rent. In general, however, amendments to existing law were favorable to the absolute right of property in land,<sup>2</sup> and to the most perfect facilities for its transfer.

For some five years after the legislation of 1860, little was heard of the land question—far too little, indeed, to betoken the success of the acts. By 1865, their failure to effect any real improvement in agricultural conditions became pronounced. Irish agitation was making itself manifest in the widespread activity of the Fenians, and the self-introspection to which conscientious Britons devote themselves at the periodical revivals of discontent in the sister island revealed the hopeless insufficiency of their ideas as to land legislation. The landlords' improvements sections of Cardwell's Act had been invoked in but two cases in three years;<sup>3</sup> the provisions for tenants' improvements, in but one case. The carefully arranged stimulus to leases had produced, so far as statistics were available, nine leases. As to Deasy's Act, it was reported that the net result had been, by the simplification of procedure, to make ejectment more common, and so to contribute much to the greatest of all evils—insecurity of tenure. The new landlords with business instincts, from whom so much had been expected, had displayed these instincts in a way most disastrous to the interests of the tenants. Business instincts are only satisfied with large returns for investments, and the search for such returns had resulted in ejectments without mercy and in wholesale confiscation of tenants' improvements. As was stated before a select committee, the new landlords "were men who had not the old traditions of negligence and indulgence combined."<sup>4</sup>

<sup>1</sup> Hansard, vol. clx, p. 271.

<sup>2</sup> For a good discussion of this act in all its bearings, see Montgomery, *Land Tenure in Ireland*, chapter ix.

<sup>3</sup> Report on the Landlord and Tenant Question in Ireland, by W. Neilson Hancock, LL.D. *Parliamentary Papers*, 1868-69, vol. xxvi.

<sup>4</sup> Reports of Committees, 1865, vol. xi.

Lengthy explanations as to why the land acts had failed were abundant. The complicated machinery of their operation had to bear most of the blame. The period of renewed discussion that now began was to result in legislation based on new principles rather than improved machinery.

### III. *Legislation recognizing the Possessory Right of the Tenant.*

In 1865 came the first official announcement that a great conspiracy existed among Irishmen to secure the independence of their fatherland. While British dominion in Ireland was never in any real danger from this conspiracy, the very extensive membership of the Fenian organization was an effective stimulus to the consideration of Irish grievances. From 1865 to 1868 Ireland grew steadily in prominence as a subject of political debate, and in the last of these years practically excluded every other topic.<sup>1</sup> The Irish members in Parliament pointed out as leading grievances the position of the established church and the relations of landlord and tenant.<sup>2</sup> Mr. Gladstone, then just ripe for party leadership, with the politician's instinct took up the church question first, and by means of it scored his first decisive victory over Disraeli in 1868. With the disestablishment of the Irish church in the following year, the way was cleared for the settlement of the land question under the same leadership.

In the interval between 1865 and 1869 propositions relating to this question had been a regular feature of every session of Parliament. Mr. Chichester Fortescue, chief secretary for Ireland in Earl Russell's ministry, brought in a bill designed to infuse some vitality into the act of 1860. So far as the tenant's compensation for improvements was concerned, this proposition went back to the old idea of a government official to determine the amount, which was to be paid, however, as a lump sum and not as an annuity, and which was to be estimated by the increase in the letting value due to the improvement.<sup>3</sup> In the following

<sup>1</sup> *Annual Register*, 1868, p. 44.

<sup>2</sup> See Maguire, in the debate on the Address, *Ann. Reg.* 1866, p. 17.

<sup>3</sup> *Ann. Reg.* 1866, p. 43. For the bill, see *Parliamentary Papers*, 1866, vol. v, *Tenure and Improvement of Land (Ireland)*.

year, Lord Naas, on behalf of the Derby cabinet, introduced a proposition seeking to stimulate tenants' interest by providing for advances of money by the government for specified kinds of improvement. Certain of the works named were made independent of the landlord's consent, on the ground that they could not possibly damage the owner's interest.<sup>1</sup>

But these government measures, like a number of private members' bills, were all overwhelmed in the confusion of ministerial changes due to the questions of Parliamentary reform and Irish church disestablishment. The efforts to revamp and make useful the old principles lost their interest before the manifest purpose of Mr. Gladstone, in his now well-defined rôle of advanced Liberal and friend of Ireland, to undertake a solution of the land question on lines that should give at least as much play to tenants' interests as to landlords' rights.

On the 15th of February the bill was introduced which after long discussion became the Landlord and Tenant (Ireland) Act of 1870.<sup>2</sup> With this piece of legislation the new era in the land question was definitely opened. Mr. Gladstone announced that the demands for justice to the tenants were by this law to be fully satisfied, and the vexatious matter was to be finally settled. Nothing could be more perfectly characteristic of the usual relation between the government's acts and Irish demands than the fact that the present bill bore a close resemblance to that framed by the Tenant League in 1852.<sup>3</sup> In other words, the government had reached the point where Irish agitation had been eighteen years before. It was going to take eleven years to reach the point where the Irish leaders now stood. British concession had got as far as the Ulster tenant right;<sup>4</sup> Irish demand was far away at "the three F's."<sup>5</sup>

For our purpose it may be well to consider first the solution

<sup>1</sup> Levelling of old fences, the making of new fences and roads and the erection of buildings. Ann. Reg. 1867, p. 141 *et seq.*

<sup>2</sup> 33 and 34 Vict. c. 46.

<sup>3</sup> Chichester Fortescue, Hansard, 3d series, vol. xcix, p. 1433. For the bill of 1852, introduced by Sergeant Shee, see Bills Public, 1852-53, vol. vii.

<sup>4</sup> Hansard, vol. xcix, p. 1443.

<sup>5</sup> Free sale, Fixed tenure, Fair rents.

given to the question of compensation for improvements—the leading question of the preceding period. Here the act was entirely adequate. With a number of equitable qualifications, the incumbent of any tenancy less than a leasehold for thirty-one years was given a claim, at the termination of his tenancy, for compensation for improvements made by himself or his predecessors in title.<sup>1</sup> For holdings of not more than fifty pounds annual value, any contract depriving the tenant of this claim was made void, and in general the presumption of the law was declared to be that all improvements were the work of the tenant.<sup>2</sup> The determination of the amount due, with all considerations of limitations and set-off, was left to the courts.

In these provisions the whole case of the Irish tenant on the subject of improvements was gained. The ancient sensitiveness for the rights of property, which had so elaborately safeguarded the landlord's interest in the management of each holding, had lost its influence. Especial emphasis had been given to the tenants' grievances by a realization of the effect of the Incumbered Estates Act. In sales under this law the improvements on the land, by whomsoever effected, had constituted an element in enhancing the price, and consequently had been made by the purchaser the basis for increased rent. The tenant, in short, had seen his improvements confiscated and sold before his face, and had then been called upon for higher rent to pay for them.<sup>3</sup> Facts of this sort gave great support to the claim of protection for investments of tenant's capital, and in the movement in this direction all the old obstacles set up by the landlords were swept away. The provisions of the act were made to apply to past<sup>4</sup> as well as to future improvements, and this clause, which had once seemed rank communism, excited almost no controversy whatever.

<sup>1</sup> Sec. 4.

<sup>2</sup> Sec. 5. This was known as "the O'Connell clause," having been devised by the great agitator. Chichester Fortescue, Hansard, vol. xcix, p. 1445. On the insistence of the Lords, a section was inserted permitting a landlord to file with the court a schedule of improvements made by himself, and thus to counteract the presumption otherwise binding. See sec. 6.

<sup>3</sup> *Cf.* Gladstone, Hansard, vol. xcix, p. 344.

<sup>4</sup> Provided they had been made within twenty years.

But if compensation for improvements was conceded with little objection, it was mainly because the conservative elements found themselves hard beset by the other propositions of the bill. Now for the first time a government took up for action that "want of tenure" which from the days of the Devon Commission had been a recognized source of trouble in Ireland.<sup>1</sup> The popular leaders in Ireland had, by this time, gone beyond the Ulster tenant right, and were demanding for occupiers fixed tenure at fair rents, to be valued by government officials.<sup>2</sup> Mr. Gladstone definitely rejected *perpetuity* of tenure—declared himself unwilling to make landlords mere rent-chargers on their own estates.<sup>3</sup> But *security* of tenure he deemed a prime desideratum, and he shaped his course toward that end by all the side paths that seemed to lead in that general direction. He took up the Ulster tenant right, which the Devon Commission had found too radical and the Irish leaders too moderate for successful use. He encouraged long leases. He adopted the idea of compensation for arbitrary eviction. He incorporated in his bill, but with much skepticism as to results,<sup>4</sup> Mr. Bright's favorite scheme of governmental aid to the establishment of a peasant proprietary. The so-called "Bright Clauses" will be considered further on. Here it is important only to notice the parts of the bill dealing with tenant right and compensation for disturbance.

The general plan of the act for making tenure more secure was as follows: (1) For Ulster, the tenant-right custom was declared to be legal, and was made enforceable by the courts in case of any holding where it was proved to exist; (2) outside of Ulster any usage essentially like the Ulster custom was in like manner declared to be legally enforceable; (3) any tenant of a holding not falling under either of the former provisions, who should be "disturbed in his holding by the act of the landlord," was declared entitled to compensation for the loss sustained in quitting his holding—the amount to be determined by the court subject to the limitations of a scale embodied in

<sup>1</sup> See *supra*, p. 59.

<sup>2</sup> *Ibid.* p. 351.

<sup>3</sup> See Hansard, vol. cxcix, p. 1748 *et seq.*

<sup>4</sup> *Ibid.* p. 361.

the act. The common element in these three clauses was that in case of arbitrary eviction the ejected tenant was assured of a sum of money which bore no necessary relation to any investment he had made in improvements on his holding.<sup>1</sup> Under the Ulster custom it was indeed understood that the sum paid included compensation for improvements.<sup>2</sup> But instances were not unknown in which the payment exceeded not only the value of improvements, but the value of the fee simple of the holding.<sup>3</sup> Under the compensation for disturbance clause, there was a deliberate exclusion of any consideration of improvements, which were treated in another section. While the tenant thus, at the determination of his tenancy, was legally entitled to a cash payment, the landlord, under the same circumstances, was subjected to a legal mulct. In the compensation for disturbance this pecuniary burden was direct and immediate. In case of the Ulster right the loss was indirect and more or less remote, manifesting itself through the inevitable influence of the custom on rent; for the payment came from the incoming tenant, and diminished by so much his rent-paying ability.

In dealing with the Ulster custom as it did the government very cleverly avoided the baldest attack on the landlords' property rights. The demand of the Irish agitators had been that the custom should be made the law for all Ireland; in other words, that by direct enactment a part of the landlord's interest in every holding in the land should be transferred to the tenant. But the act was limited to those estates in which this transfer had already been effected by custom; and to give legal sanction to such a custom was relatively an unimportant matter. It was easily conceded that the usage could not be abolished where it

<sup>1</sup> A distinction to be noted is that a voluntary relinquishment of the holding brought compensation only under the special customs, and not by the general law. Whether security against eviction while the rent was paid was an incident of the Ulster custom, had been a much disputed point. The practical solution had been that when a landlord wished to resume a holding, he bought up the tenant right.

<sup>2</sup> The Solicitor-General for Ireland, Hansard, vol. cc, p. 1022.

<sup>3</sup> On a farm rented at £25 the tenant right sold for £800; on another renting at £7 10s. the tenant right brought £160. Hansard, vol. cc, pp. 785, 786. Twenty years' purchase of the rent would often cover the fee simple.

existed. But by many it was regarded as a serious evil. Tenant right was in fact a most vague and indefinite concept<sup>1</sup> and varied so much from estate to estate in all its incidents that no attempt was made to define it in the law. But besides this vagueness there was a large body of belief among those who had watched its workings that the custom was from the economic standpoint inherently vicious, and during the discussion a number of amendments were offered looking to its extinction.<sup>2</sup> The main charge was that the outlay for the tenant right absorbed so much of the tenant's capital as to render proper cultivation of the farm impossible.<sup>3</sup> There were some landlords who had expended large sums in buying up the tenant rights on their estates, believing the extinction of the right worth the outlay.<sup>4</sup> In justice to these a clause was inserted providing that when the landlord had bought up the tenant right of a holding, the custom should no longer be deemed to exist there.

Compensation for disturbance, also, in the first draft of the bill was so arranged as to disguise the creation of a tenant proprietary interest in the holding. No distinct provision was presented touching payment for improvements. The compensation which the tenant could claim at eviction might thus be regarded as the equivalent of his outlay on the holding, and the stickler for the just rights of property had nothing harder to swallow than the presumption—rather violent, perhaps, from the landlord's point of view—that every occupier whom the owner of an estate wished to get rid of had an actual pecuniary interest in unexhausted improvements. But this refuge for the sensitive was destroyed by the government's amendment, introduced in committee,<sup>5</sup> creating a special section to deal with improvements and leaving the compensation for disturbance

<sup>1</sup> See Dr. Ball, in Hansard, vol. cxcix, p. 1454 *et seq.*

<sup>2</sup> Cf. Hansard, vol. cc, p. 743; vol. ccii, pp. 649 *et seq.*

<sup>3</sup> The right was thus described by the president of the Royal Agricultural Society: "An ingenious device which takes from the landlord without giving to the tenant; and while ostensibly conferring a benefit on the cultivator of the land, really robs him of his capital so long as he has any land to cultivate." Cf. Hansard, vol. cc, p. 755.

<sup>4</sup> Lord Dufferin was one of these. He always ranked as a "good landlord." Cf. Hansard, vol. cxcix, p. 1506.

<sup>5</sup> Hansard, vol. cc, p. 1078.

with no possible justification save the damage due to cessation of the tenancy. The mere exercise by the landlord of his legal right to resume possession of his property subjected him to a legal claim by the former tenant for a sum varying from seven to one year's rent, according as the annual ratable value of the holding varied from £10 and under to £100 and over. And this too, even in case the resumption of the holding was at the expiration of a lease, provided the term had been less than thirty-one years. It was difficult not to see in these provisions the recognition of a right in the tenant to continued occupation, and a corresponding diminution of the landlord's interest. But the government did not yet by any means defend their proposition on the ground of a direct proprietary interest of the tenant. The chancellor of the exchequer explained that since improvements were definite matters of fact, while "disturbance" was indefinite, a separation of the two items, with a maximum limit to compensation for the latter, was necessary to protect the landlord from excessive mulcting.<sup>1</sup> Mr. Gladstone, still clinging to the "improvement" idea, explained that the distinct compensation for disturbance was designed to cover works on small holdings, such as cabins, fences, *etc.*, which meant labor and expense to the poor tenant, but which could never be proved in court to be improvements from the landlord's point of view.<sup>2</sup> And the inclusion of leaseholds in the provision was merely to prevent evasion of its requirements; for what landlord would subject himself to the claim for compensation if a two-years' lease would enable him to escape it?<sup>3</sup>

But if the act of 1870 abandoned the protection of the landlords' absolute property rights, it gave by no means a perfect protection to the newly created tenant interest. It discouraged eviction, but it did not make it impossible. The government steadfastly refused to consider any proposition looking to interference with the landlord's right to demand what rent he pleased; and non-payment of rent debarred the tenant from

<sup>1</sup> Mr. Lowe, Hansard, vol. cc, p. 1194.

<sup>2</sup> Hansard, vol. cc, pp. 1444 *et seq.*

<sup>3</sup> *Ibid.* pp. 1533 *et seq.*

claiming compensation at eviction.<sup>1</sup> Under the Ulster custom it was open to the landlord to extinguish the tenant right by forcing the rent up to such a point that no one could afford to bid for the occupancy. The tenant on such an estate, however, was given by the act the option of claiming under the general compensation clause. But here there was nothing whatever to prevent the raising of rent to such a point as to make non-payment a certainty, and hence to secure to the landlord the absolute control over the holding. In a country where competition for land was less fierce than in Ireland, the bill would have promised much for security of tenure. But for that country the prospect was not reassuring; and it was pointed out that the arrangement by which the rate of compensation was largest for the smallest holdings would inevitably create a tendency toward consolidation of farms<sup>2</sup>—that most fatal of facts for the peace of Ireland.

In the overwhelming importance of the compensation idea in this act of 1870, little attention was attracted to the minor features of the scheme. We may notice, however, that the earlier propositions for effecting improvements in the general situation of Ireland were still in the minds of the framers. The efficacy of long leases is still recognized in the provisions exempting leaseholds of thirty-one years and over from the compensation clauses of the act; and the evils due to limited ownership are assailed in the section (28) extending the power of limited owners to grant leases. Excessive subdivision of farms finds discouragement in the denial of compensation to tenants who subdivide or who let holdings in conacre. And finally, the question of the condition of the agricultural laborers, after giving rise to lively controversy, resulted in permission to the landlord to take into his own hands, without incurring a claim for compensation, sufficient land for the construction of decent cottages for the laborers necessary to the work on his estate.

<sup>1</sup> In case of existing tenancies the court was authorized by section 9 to consider a claim for compensation in case of ejectment for non-payment of rent, when the rent was under £15 per annum and the court believed it to be exorbitant. For the special reasons for this judicial valuation of rents, see Hansard, vol. cci, p. 400 *et seq.*, esp. Gladstone, p. 404.

<sup>2</sup> Cf. Montgomery, *op. cit.*, p. 147.

Such in general outline was Mr. Gladstone's first great land act. That it effected an enormous revolution in the relations of landowners and their tenants, was obvious. That the new relations would insure tranquillity to Ireland, was not so clear. The landlord class fretted under the restrictions imposed upon their property rights after a decade of the most complete freedom. The "good landlords," who were universally admitted to be a great majority of the class in Ireland, were insensibly led to substitute a more strictly legal system for the old patriarchal régime on their estates, and the "bad landlords" found evasion of the law a matter of no great difficulty. The tenants, on the other hand, keenly appreciated at first the credit which their claim to compensation gave them, but soon realized that their tenure was little more secure than before. The farm from which the occupier could assure himself of some sort of a living might be taken from him, and a sum of money, with the proper use of which he was wholly unfamiliar, given to him instead. Moreover, rents tended steadily to rise; for the risk of a claim for compensation could not be carried by the landlord gratuitously.

It was through the Home Rule Association, organized in Dublin while the land bill was before Parliament, that the dissatisfaction with Mr. Gladstone's Irish measures found formal expression. But while the landlord interest was largely concerned in the formation of the Home Rule party, the policy of the party, under the leadership of Mr. Butt, soon took the direction of more radical concessions to the tenants. The "three F's" became the burden of the Home Rulers' demand, and many bills in this sense were brought up in Parliament<sup>1</sup> between 1870 and 1880, but no government gave them support. It was not till the rise of Mr. Parnell to prominence and leadership, and the thorough democratization of the Home Rule party, that the government was forced to acknowledge that the Irish land settlement could not be left as final.

WM. A. DUNNING.

<sup>1</sup> Mr. Butt's bill in 1876 provided for perpetuity of tenure, with a periodical revision of rents on the basis of agricultural prices. Parliamentary Papers, 1876, vol. iii.



## IRISH LAND LEGISLATION SINCE 1845. II.

### III. *Legislation recognizing the Possessory Right of the Tenant (concluded).*

THE occasion for a reopening of the whole question as to the relations of landlord and tenant was furnished by nature. From 1870 to 1877 the general condition of Irish agriculture had been to all outward appearances highly prosperous. In 1878, however, there was a partial failure of the potato crop, and this was followed the next year by an almost total failure. The suffering that immediately manifested itself in many parts of Ireland showed quite conclusively how superficial was the prosperity that had prevailed. Most conspicuous among the phenomena of the new situation were the strained relations between landlords and tenantry all over the island, and the notable increase in evictions and in agrarian crime. By the end of 1879 Ireland was once more the most conspicuous fact in British politics. In the fall of that year the Land League was organized, and the systematic campaign against landlordism and rent was duly inaugurated. It is quite beyond the scope of this article to describe the agitation that filled the years from 1879 to 1886. Suffice it to note that out of the turmoil of this time arises the great land law of 1881 and its associated measures, and that amid the lurid incidents of these years the transition period of the Irish land question comes rapidly to a close.

In the multitude of opinions as to the real causes and the proper remedies of the discontent, all the views which I have sought to make familiar were again ventilated, and along with these many of a modified character which time and more careful historical study had brought forth. For those of the Conservative, the Liberal and the Irish Nationalist parties respectively, the reports of the Richmond and Bessborough Commissions and the programme of the Land League may be taken as in a

general way representative. The Richmond Commission was appointed by the Beaconsfield ministry in 1879 to make a general study of the agricultural depression which affected Great Britain as well as Ireland. Only that part of its work touching the latter country attracted great attention.<sup>1</sup> The evidence it collected was exceedingly full and valuable, but its report was very conservative in tone. As to the causes of the depression, at least all due prominence was given to those which could not reflect on the landlords. The inclemency of the seasons, causing failure of the potato crop, and the rigor of foreign (American) competition in agricultural products were mentioned, but more importance was ascribed to the inordinate inflation of credit due to the assignment of a value to the tenant's interest in his holding by the act of 1870. The excessive competition for land was held responsible for a number of serious evils, namely, unreasonable payments for tenant right, arbitrary increase of rents, overcrowding of the population in certain districts and minute subdivision of farms. The remedies suggested for the deplorable conditions carry us back to the earliest days of the land question: emigration and migration;<sup>2</sup> public works for the development of the country; the encouragement of sound education in agricultural methods; and finally, but in a very mild form, modification of the conditions of tenure.

The desire for legislative interference to protect him [the tenant] from arbitrary increase of rent does not seem unnatural; and we are inclined to think that by the majority of landowners legislation properly framed to accomplish this end would not be objected to.

Such was Conservative concession to the agitators who were then filling the welkin with wild demands for fair rents or no rents at all. And even this guarded expression of an inclination to an opinion was counterbalanced by Professor Bonamy Price, who, in the name of political economy, appended to the commission's report a most vigorous attack on the three F's.

At the opposite extreme from the views of the Richmond

<sup>1</sup> For the report, see Parliamentary Papers, 1881, vol. xv.

<sup>2</sup> That is, the transfer of population from the overcrowded to the less densely peopled parts of the island.

Commission lay the ideas advocated by the Land League.<sup>1</sup> The immediate causes of discontent in Ireland were, in the view of this organization, not so widely different from those stated by the Richmond Commission, but the ultimate and fundamental responsibility for the trouble was to be laid at the door of landlordism as an institution. So long as such a system existed in Ireland, situations like the present would inevitably recur from time to time. The competition of the free lands of America and other favored countries would always be fatal to the success of agriculture under the "rent-tied and paralyzing conditions" in Ireland. Irish landlordism had neglected its duties, but had stood unflinchingly upon its rights. The excessive rents which were everywhere the rule, and the evictions which were mercilessly enforced for non-payment, were the evidence of this. As for remedies, there was but one. The act of 1870 had failed. Compensation for disturbance had not protected the tenant from injustice—had not secured him in the quiet and peaceable possession of his home. Nor would the three F's be more effective. Fair rents meant government valuation; and government valuation meant more or less complicated and expensive litigation.<sup>2</sup> This would be no boon to the small holder, whose sufferings were the worst. Rents must cease altogether. The occupier must become the proprietor of his holding, and the landlord and tenant system—an exotic in Ireland, and hence of distorted growth—must be swept away. But this was not to involve the financial ruin of the landlords. Whatever was taken from them was to be paid for.<sup>3</sup> The method of effecting this great revolution in tenure should be by government advances of purchase money wherever landlords and tenants could agree as to terms; elsewhere, by direct expropriation by the government and then sale or letting to the old tenantry.

<sup>1</sup> The constitution and other documents illustrating the character and objects of the Land League are given in full in Russell's Speech before the Parnell Commission (Macmillan, 1889), chapter ix.

<sup>2</sup> For an able criticism of past and proposed legislation from the Land League standpoint, see the "Programme of Parliamentary Land Reform," given in full in Russell, p. 201.

<sup>3</sup> It may be remarked that the terms suggested were not such as to engender a vast amount of enthusiasm among the landowners.

Between the two extreme views as to the causes of the situation and its remedies lay that embodied in the report of the Bessborough Commission. This body was appointed by the Gladstone ministry in 1880 for the special purpose of investigating the operation of the act of 1870. Its members were all landlords, but of a liberal kind, and its report stands out as one of the most valuable contributions ever made to the philosophic study of the land question.<sup>1</sup> As to the act of 1870, the commission was obliged to believe that it had failed in its purpose. The statistics of recent evictions revealed that security of tenure had not been attained. But it was this security for the actual cultivator of the land that was absolutely indispensable to Ireland's welfare, and the claim to such security rested upon the fact that the tenant had always had morally, and until late years legally, a positive proprietary interest in his holding. That is, the tenancy from year to year, which had for generations been the prevailing tenure in Ireland, had been customarily regarded by the occupier as a permanent tenure so long as the rent was paid.<sup>2</sup> Openly in Ulster and secretly throughout the rest of the country, the sale of the tenant's interest had long been a common practice. History revealed clearly the fact that from the days of clan ownership, before the English conquest, through the troublous times of the plantations and through all later changes,

the Irish farmer remained faithful to the soil of his holding and persistent in the vindication of his right to hold it. In the result there has in general survived to him through all vicissitudes, in spite of the seeming or real veto of the law, in apparent defiance of political economy, a living tradition of possessory right such as belonged in the more primitive ages of society to the status of the man who tilled the soil.

This feeling among the tenantry had been encouraged by the general attitude of the landlords. Evictions had not been a common practice, even for non-payment of rent; and rents had

<sup>1</sup> For the report, see Parliamentary Papers, 1881, vol. xviii.

<sup>2</sup> The widely noticed unpopularity of leases in Ireland was due to this feeling. The tenant regarded a lease as a device for setting a limit to his occupation, which otherwise would be without limit.

never been kept up to what would have been considered in England a full commercial rate. But during the present century English law had taken a steady course away from the ideas of status and had sought to draw Ireland with it. Ejectment had been made a very simple instead of an extremely difficult procedure.<sup>1</sup> Deasy's Act had definitely declared the substitution of contract for status as the principle of the land law. But this enactment, the commission thought,

may be said to have given utterance to the wishes of the legislature that the traditional rights of the tenants should cease to exist rather than to have seriously affected the conditions of their existence.

In view of all these circumstances, the conclusion was that the tendency to depart from the recognition of the tenant's interest must be checked. The spoliation of the cultivator by law must cease, and on the other hand, all efforts must be made to guard the interest which was morally and traditionally his.

As to the means for the accomplishment of these ends, two presented themselves as practicable: first, the shaping of legislation to insure the existence of the tenant's proprietary interest by the side of the landlord's—the full and positive development of the principle adopted in a partial and negative way in 1870; second, the abandonment of all efforts to maintain the two interests side by side, and the application of every energy to the creation of a peasant proprietary. To the majority of the commission the former seemed the more feasible plan, and the recommendations in detail presented in general the scheme of the three F's which the Irish leaders had for ten years or more been advocating. But the majority of the commission fully recognized the wisdom of financial encouragement to tenant purchasers, and one of the members, the O'Connor Don, sketched in a separate report a complete project for the transfer of ownership to the tenantry through government instrumentality.

Out of the many propositions before the public for deal-

<sup>1</sup> For a summary of the development of the law of ejectment, see Report of the Commission, Appendix F. It may be noted here that the exceeding inhumanity of some incidents of the law of distress had had more or less to do with the development of ejectment as a remedy in case of non-payment of rent.

ing anew with the land question, Mr. Gladstone's ministry chose that embodied in the Bessborough Commission's report for its principal guide in framing the measure which became the Land Law (Ireland) 1881.<sup>1</sup> While almost all the remedies of all the parties were given recognition—emigration, peasant proprietorship and the rest—the question of tenure formed the central point in the elaborate structure, and the solution reached was an approximation to the three F's.<sup>2</sup> It was assumed that the act of 1870 was a step in the right direction. The tenant interest which had in that act been recognized positively by legalizing the Ulster custom and negatively by the compensation for disturbance, was impressed now with the completest statutory character as property by the enactment of the first "F," namely, Free sale. We have seen<sup>3</sup> with what earnestness Mr. Gladstone had labored in 1870 to disclaim the creation of a proprietary interest for the tenant. In 1881 he still insisted that compensation for disturbance had been designed as a penalty on the landlord, and not at all as a right of the tenant, but he confessed with sadness that whether intended or not, the effect of this legislation had been to make tenant right "something sensible and considerable."<sup>4</sup> This result of positive legislation, coupled with the traditional feeling of possessory right among the people of Ireland and with the fact that by common law the sale of an estate in land, however insignificant, was permissible, was made the justification of the first part of the act. The essence of this part is the enactment that a tenant<sup>5</sup> shall be permitted to sell his tenancy for the best price he can get. What had been sedulously avoided in 1870 was thus adopted, and a share in the value of every holding was secured to the occupier. What had developed by custom in Ulster was created by statute elsewhere. To the cry

<sup>1</sup> 44 and 45 Vict. c. 49.

<sup>2</sup> "The three F's I have always seen printed have been three capital F's; but the three F's in this bill, if they are in it at all, are three little f's." Gladstone, Hansard, vol. cclxiii, p. 1419.

<sup>3</sup> See this QUARTERLY for March, 1892, p. 77.

<sup>4</sup> Hansard, vol. cclx, p. 902.

<sup>5</sup> Agricultural and pastoral holdings only are referred to.

of confiscation raised by the landlord interest, it was answered that the value of the landlord's property was measured by his rent, and that by this clause rent was not touched. To the argument that the competitive price paid for tenant right must inevitably reduce rents, it was retorted, with an aptness which eleven years' study had made possible: not more than competitive rents and a century and a half of legislation facilitating ejectment have reduced the value of tenant right.<sup>1</sup> The recognition of the occupier's interest was thus given the character of a revival—a restoration of rights which the era of free contract had unjustly taken away.

The economic problem presented by the definite establishment of a dual interest in every holding was quite analogous to that involved in the relations of wages and profits. The produce of the farm was the fund from which must be derived the rent and the interest on the tenant right. With that produce a fixed quantity, it was inevitable that increase in either of the divisors must mean decrease in the other. This was the ground on which the landlords claimed that the institution of tenant right where only rent had existed before was confiscation.<sup>2</sup> They earnestly demanded a definition of the tenant's interest which would show that rent would not be affected. Such a definition was attempted by some speakers, who pointed out that, according to the Bessborough Commission, full commercial rent was not usually exacted in Ireland, and that the tenant was merely assured the difference between this possible rack rent and the actual rent. Others again suggested the solution like that which recent political economy has tended to give to the wages question,—that the encouragement and security given to the farmer by the recognition of his interest would result in a greater gross product from the farm, so that both landlord's and tenant's interest might increase in value together.<sup>3</sup> But no close definition of tenant right was undertaken in the act itself,

<sup>1</sup> Cf. Gladstone, Hansard, vol. cclxi, p. 587.

<sup>2</sup> A demand for compensation to the landlords was a conspicuous feature of Conservative policy toward the bill.

<sup>3</sup> Hansard, vol. cclx, p. 1408.

and not only theory but the experience of the last eleven years supported the claim that the two interests in the same property were antagonistic. Since the legislation of 1870 had brought the subject to general notice and had intensified the antithesis of rent and tenant right, the struggle of the landlords against the latter had become much more vigorous than before. The evidence of both the great commissions contains abundant illustrations of this. In Ulster the work had been carried on by "office rules" imposing a maximum limit on the price to be paid for tenant right or requiring an increase of rent at each transfer. Elsewhere rents had been raised to cover the risk of compensation for disturbance, and in many instances the payment of the compensation had been willingly undertaken by the incoming tenant.<sup>1</sup> The success which attended these efforts of the landlords set in strong light a fact of the utmost significance, namely, that the fierceness of the competition for land holdings in Ireland made the outcome of the conflict between the two interests demanding a share of the produce perfectly certain from the beginning. Rent was economically the strongest and tenant right must go to the wall. This was the basis of the government's further step now in taking up the second "F,"—Fair rents. Having given a clear legal recognition to the tenant's interest, the act of 1881 proceeds to close up the avenue through which the landlord might by virtue of economic forces successfully assail it. The situation in which tenant right was restricted and rent determined by free competition was reversed, and henceforth it was rent that was to be restricted, while tenant right was to benefit by the free competition.

The essential provision in reference to this matter is that of section 8, according to which any tenant of a present tenancy who is dissatisfied with the existing or proposed rent may apply to the court, where, after consideration of all the circumstances of the case, a fair rent is to be fixed. No definition or description of fair rent is undertaken in the bill; all is left to the dis-

<sup>1</sup> This practice, oddly enough, amounts practically to the sale of the holding. The tenant, not the landlord, pays the cost of eviction.

cretion of the court.<sup>1</sup> The animus of the enactment is sufficiently obvious, however, and the chief duty of the court is understood to be the protection of the tenant's interest—the restriction of rents to such figures as shall leave a market value to tenant right. Fair rent, said the attorney-general for Ireland, means “competition rent minus the yearly value of the tenant's interest in the holding.”<sup>2</sup> The court was to protect the economically weaker interest against the destructive forces of free competition. The landlord still retained the right to demand higher rent, and, on the other hand, he was authorized to obtain from the court, at the time of fixing the rent, a valuation at which he might pre-empt the tenant right. In these powers was supposed to be adequate protection for his interest. For future tenancies<sup>3</sup> the provision was that, upon a demand for higher rent, the tenant might sell the holding, subject to the increased rent, and might then obtain from the landlord through the court the amount by which the increased rent should be judged to have depreciated the selling price of his interest.

The adoption of the principle of valued rents made absolutely necessary some degree of fixity of tenure. The basis of Mr. Gladstone's arrangement on this point is a secure term of fifteen years renewable practically forever. During this term the rent cannot be raised nor will application for reduction be entertained by the court, and the tenant can only be ousted for breach of one of six “statutory conditions,” of which the most important are (1) due payment of the rent, (2) abstention from persistent waste, (3) abstention from subdividing or subletting the holding. A tenancy becomes subject to this term and these

<sup>1</sup> The first draft of the bill contained a clause directing the court to guide itself by the compensation for disturbance which would apply to any holding in question. But the construction of the clause was shown by the Tories to require in some cases the fixing of the rent at a negative quantity, and the government was forced to abandon the instruction. Cf. Gibson, Hansard, vol. cclx, p. 1085 *et seq.*

<sup>2</sup> Hansard, vol. cclx, p. 1399. It is evident from this definition that the tenant who succeeds to a holding by purchase may be subject to a virtual rack rent, the two elements of which are the fair rent that goes to the landlord and the interest on the purchase money, which in too many cases goes to the “gombeen man,” or usurer.

<sup>3</sup> Those created after the passage of the act, e.g. if the landlord lets a portion of his demesne or a holding of which he has bought up the tenant right.

conditions (1) when the tenant accepts the demand of the landlord for an increased rent, (2) when a judicial rent has been fixed by the court and (3) when landlord and tenant file in court an agreement as to a fair rent. The law also provides for the creation of a “fixed tenancy” in the fullest sense of the term by the voluntary agreement of landlord and tenant.<sup>1</sup> At the same time that these provisions opened the way to an unheard-of transformation in the old tenancies at will, the act of 1870 was still left in force for the benefit of occupiers who from circumstances or inclination kept away from the complexities of the new law. The scale of compensation for disturbance was modified to avoid certain defects that had been noted in experience, and was made rather more severe. The provisions touching compensation for improvements, also, were subjected to amendments that increased their usefulness to the tenants. And under certain conditions suggested by the new measure, the encouragement to the creation of leaseholds for over thirty-one years was continued. Thus *security* of tenure was moulded into one great system with that degree of *fixity* which the conservative spirit of British legislation was now prepared to accept.

The other feature of the act of 1881 which attracted especial attention was the part dealing with public advances to promote the purchase of holdings. In regard to the encouragement of a peasant proprietary, a notable change of attitude in the last decade became apparent. Tory and Parnellite extremes now came together in the greatest harmony in support of the principle, and indeed opposition to it was practically unknown. Differences of opinion only emerged when the method and extent of the government's assistance in realizing the principle came into discussion. The decisive influence in determining the limits of government aid was the “financial conscience” of Mr. Gladstone and Sir Stafford Northcote, who, as leaders respectively of the two parties, agreed in dreading the responsibility that would be incurred by too generous draughts on the treasury for the benefit of either interest in Irish affairs.<sup>2</sup> Without treating in detail at this point the provisions finally

<sup>1</sup> Section 11.

<sup>2</sup> Cf. Hansard, vol. cclxiii, p. 302, 404 *et seq.*

agreed upon, it is sufficient to note that a very general opinion prevailed already, that in government assistance to tenant purchase lay the germ of the final solution of the vexatious question. Lord Hartington had gone so far as to assert in a public address that the earlier parts of the bill were only a *modus vivendi* to effect the transition to peasant proprietorship. And all Mr. Gladstone's unrivalled skill in explaining away this declaration of his colleague, and all his genius in convincing himself that co-proprietorship was a real and final settlement of the question, failed to effect a radical modification in the general belief.

The career of the act of 1881 was not altogether prosperous. In the first place the law was regarded with the bitterest hostility by the landlord class. But far more threatening to its prospects was the attitude of antagonism assumed by the Land League. It was the unrelenting agitation of this organization and its successor, the National League, against landlordism and rent that rendered supplementary legislation indispensable to the working of the great act. From Mr. Gladstone's government was extorted the Arrears Act of 1882,<sup>1</sup> by which, for tenancies of under £30 valuation, arrears of rent which had accrued before 1881 were swept away so far as the tenants were concerned, the treasury paying to the landlord one-half the amount due. As a result of this concession the hostility of the league to the act of 1881 was somewhat mitigated,<sup>2</sup> but after the accession of the Conservatives in 1886 on the home-rule question the anti-rent agitation was renewed. The special basis now was the great fall in agricultural prices beginning in 1885, and the result was the act of 1887.<sup>3</sup>

By this law a number of amendments were made to the

<sup>1</sup> 45 and 46 Vict. c. 47.

<sup>2</sup> This was said to have been in accordance with an understanding between Mr. Parnell and the government, known as the "Kilmainham Treaty."

<sup>3</sup> 50 and 51 Vict. c. 33. The preliminary step to this act was the work of the Cowper Commission, which, after an elaborate investigation, reported that the fall in prices constituted a serious feature of the existing situation and that the ability of the tenants in very many cases to pay even the judicial rents was beyond question. The commission recommended some sweeping changes in the act of 1881, notably a lessening of the statutory term of fixed rent from fifteen to five years. For the report see Parliamentary Papers, 1887, vol. xxvi.

act of 1881, with the general effect of increasing its benefits to tenants. Leaseholders, who by the original act were entitled to the judicial revision of rent and other rights of present tenants only at the expiration of their leases, were now enabled to participate in those privileges immediately. Modifications in the law of ejectment were enacted for the purpose of checking, if possible, the number of evictions, which, in the present state of agitation, were in every instance the occasion of scandalous and often of murderous scenes. But the most significant provisions were those dealing with judicial rents. Up to August 22, 1886, judicial rents had been fixed for 176,800 of the 350,000 holdings subject to the act of 1881, and the average reduction had been 18.2 per cent.<sup>1</sup> But now the cry was raised—and with admitted justice—that these judicial rents were too high. And it appeared that the commissioners administering the Land Act, in view of the fall in prices in the last two years, had adopted a much more liberal scale in making reductions than had been employed in the earlier years.<sup>2</sup> This fact naturally aggravated the discontent of those tenants who had had the misfortune to make early application. It was accordingly provided in the act of 1887 that the court should have power for three years to relax the judicial rents where the fall in agricultural prices seemed to the court to justify such action.<sup>3</sup> Nothing could indicate more clearly than this that the permanence and finality of the settlement in 1881 were delusive. Instead of the regular periodical revision of rents which the bill contemplated, there was opened up an endless prospect of irregular interventions of the legislature on every fluctuation in economic conditions.<sup>4</sup>

The Conservative government had but little heart for these final efforts to float the system of 1881 along against the tide

<sup>1</sup> From £3,227,021 to £2,638,549. See report of the Cowper Commission, pp. 6, 7.

<sup>2</sup> Cowper Commission, p. 8.

<sup>3</sup> The court was also authorized to stay eviction proceedings for non-payment of rent, judicial or otherwise, when satisfied that immediate payment was impossible, but not through any conduct, act or default of the tenant. See sections 29 and 30.

<sup>4</sup> But no one would have expected a fresh revision of rents in favor of the landlords if the movement of prices had been upward instead of downward.

of difficulties that ran ever stronger against it. The legislation of 1887 was avowedly but an expedient to gain time to mature a comprehensive scheme of purchase.<sup>1</sup>

#### IV. *Legislation facilitating the Conversion of the Tenant into a Proprietor.*

As a possible solution of the Irish land question, the system of peasant proprietorship had been constantly discussed since the time of the great famine. But the necessity of financial aid from the state in effecting the transformation had called up serious objections, both theoretical and practical. John Bright, long an earnest advocate of peasant proprietorship, was responsible for the first deliberate experiment, in the act of 1870, looking to the advance of money to tenants for the purchase of their holdings. The Irish Church Act of the preceding year<sup>2</sup> had indeed given a preference to tenants in the sale of glebe lands of the disestablished church, and had made the terms of payment particularly easy; but the creation of small proprietors was merely an incident of the measure. We have already seen<sup>3</sup> what progress had been made by 1881 in the development of sentiment favorable to tenant purchase. Between that year and 1885, under pressure of the National League's agitation, the government was forced to devote much attention to the subject. A bill was introduced in 1884 by Mr. Trevelyan, the Irish Secretary, embodying a comprehensive purchase scheme,<sup>4</sup> but the Liberal government was unable to pass it; and the net result of government action up to 1885 was a failure to effect any important increase in the number of peasant owners. An examination of the principles which were at issue in the projects already in operation will be the best preparation for an appreciation of the more successful acts of later years.

Perhaps the most fundamental question in connection with

<sup>1</sup> Cf. Balfour, Hansard, vol. cccxvii, pp. 373, 389.

<sup>2</sup> 33 and 34 Vict. c. 42, sects. 34, 52.

<sup>4</sup> Hansard, vol. cclxxxviii, p. 1570.

<sup>3</sup> See p. 509.

any purchase scheme is that as to whether compulsion should be employed in carrying it out — whether the landlord should be obliged to sell, or, on the other hand, the tenant (or the state in his behalf) be obliged to buy. The answer to this question in all the legislation thus far has been negative. Compulsory expropriation, indeed, was scarcely suggested in seriousness before 1881. The principle adopted had been merely that of aiding the tenant in carrying out a contract of sale voluntarily made with the landlord. In 1881 the Land Leaguers insisted that real freedom of contract on the tenant's part was as impossible in connection with purchase as in connection with rent, and that any stimulus to the tenants to purchase would only to that extent strengthen the hands of the landlord in exacting an exorbitant price. But Mr. Gladstone's government felt that they were doing all they cared to in securing to the tenant his own interest in the land, without dictating the terms on which he should obtain the landlord's interest also.

Assuming, then, that the agreement as to the sale and the price to be given are reached voluntarily by the two parties, the next question is as to the proportion of the purchase price to be advanced to the tenant by the government. Two principal considerations entered into the answer to this question: first, the degree of stimulus that it was expedient to give to tenants to purchase; second, the security for repayment of the advance. It seemed axiomatic that only the best kind of tenants — the thrifty, progressive element, who had some savings accumulated — ought to be encouraged to purchase. They alone would be valuable to society as owners of land; they alone could give adequate security for a return of the funds advanced. An offer of the whole of the purchase money would be too powerful an allurements, and would draw into the movement a mass of undesirable purchasers, who, in struggling to repay the loan, would only involve themselves hopelessly and in the end would find in their failure a new source of disaffection toward the government. The Irish Church Act authorized the advance of three-fourths of the purchase price as fixed by the commissioners. In 1870 the "Bright Clauses" advanced only two-thirds of the

price,<sup>1</sup> but at a somewhat lower rate of interest. Mr. Gladstone in 1881 increased the proportion again to three-fourths, though the Bessborough Commission recommended four-fifths. It is to be noted that the tenant right guaranteed to the occupier in 1881 constituted a basis for credit which had not existed before, and contributed so much to the security of any debt contracted by him.

Next, as to the conditions of repayment imposed upon the purchaser. From the beginning the manner of repayment prescribed had been a terminable annuity, covering both principal and interest, payable in semi-annual instalments, and thus assimilated to rent in its effect upon the tenant. The length of the term required to extinguish the debt was fixed in view of the same considerations that operated in fixing the amount advanced. A long term meant low interest and hence a greater inducement to the tenants to purchase. In practice, the tenant would be influenced chiefly by the relation which the semi-annual instalment bore to the rent he was paying. The legislation we are considering never went to the extent of insuring that the burden on the tenant should be less than that of the rent. Under the Irish Church Act, the maximum term of repayment was thirty-two years, and the instalments were at the annual rate of about five and one-third per cent on the advance.<sup>2</sup> By the "Bright Clauses" the term was fixed at thirty-five years and the rate of the annuity at five per cent. Under the act of 1881 these figures were retained, though many Liberal members and all the Parnellites favored a much longer term and a lower rate.<sup>3</sup> At that time the anti-rent agitation of the Land League contributed much to the timidity of the government. That the state should be regarded and treated by the Irish farmers as the landlords were treated then, was a contingency that was to be

<sup>1</sup> An amending act in 1872 changed this to two-thirds of the value.

<sup>2</sup> With the interest on the other fourth of the purchase money, and the taxes now to be borne by the purchaser, this made his position considerably worse than when he was tenant. For the desperate struggles of the purchasers to keep up their instalments, see Richmond Commission, Report of Assistant Commissioners, *Parl. Papers*, 1881, vol. xvi.

<sup>3</sup> Cf. Russell's motion to make the term 52 years. *Hansard*, vol. cckxiii, p. 404.

avoided at all hazards. The risks, political as well as financial, that had from the outset been seen to be connected with any scheme that substituted the state for the landlords, were made by the existing situation particularly conspicuous. It was felt, therefore, that the shorter the duration of such risks, the better it would be for all parties concerned.

Such in general were the principles that had been in play as to state-aided purchase up to 1885. Of the three acts in operation but one had been in a fair measure successful. The Bessborough Commission reported in 1881 that under the Irish Church Act, 6057 of the 8432 holdings sold had been taken by the tenants, and the instalments had been kept up with a very small percentage of arrears—£5914 in a total advance of £1,674,841. The "Bright Clauses" were admitted to be an almost total failure.<sup>1</sup> As late as 1887 the Cowper Commission reported that only 702 sales had been made under their provisions. The chief causes of the failure were found in the difficulty of forming estates into lots to suit purchasers, while giving due care to the interests of incumbrancers, and in the over-cautious administration of the act, through which the conditions as to security were made very onerous to the purchaser. For the purchase clauses of the act of 1881 but little greater success was forthcoming. Only 731 sales had been made under them up to 1887. As to the cause of this failure, a Lords' committee in 1882 ascribed it to the absence of sufficient inducement to the tenant to become owner.<sup>2</sup> His annual payments would exceed those under the old relation, and his rights would be little if any greater than those he enjoyed under the act as tenant. A secure tenure at a reduced rent for fifteen years was too favorable a situation to be given up without consideration. This report, it will be seen, is a manifestation of landlord discontent with the dual ownership recognized in 1881. Such discontent became very pronounced as the years rolled on, and it added Conservative to Nationalist pressure for a purchase meas-

<sup>1</sup> See Bessborough Commission's Report, sections 87-90, adopting the conclusions of a special committee of the Commons in 1877-78.

<sup>2</sup> *Parliamentary Papers*, 1882, vol. xi.



ure that would induce tenants to buy. The cardinal feature of such a measure, it was maintained, must be a term of repayment that would reduce the annual demand on the purchaser to a figure appreciably below the rent he was paying.

The legislative results of the situation thus produced were the successful measures of purchase known as the Ashbourne Acts of 1885 and 1888,<sup>1</sup> and the extremely comprehensive scheme of Mr. Balfour passed in 1891. The first Ashbourne Act was passed with very little opposition by Lord Salisbury's government during its short lease of power in the summer of 1885. The reason ascribed for the introduction of the bill was, as in the case of Mr. Trevelyan's bill of the previous year, the utter flatness of the market for Irish land. "At the present moment," said Hart Dyke, in the Commons, "land is practically an unsalable commodity in Ireland."<sup>2</sup> Whether this was due to the anti-rent agitation which had flourished since 1879, or to the agricultural depression just making itself felt, or to both, the situation was one that should be changed. The Nationalists called the measure a "landlords' relief bill." But since the purpose of the agitators to make the tenants the only possible purchasers of Irish land<sup>3</sup> had succeeded, it was thought to be a small mercy to enable the landlords to sell to them. The inducements offered to the tenants in the act were all that the most liberal advocates of state-aided purchase had seriously proposed. The whole amount of the price agreed upon was advanced and the term of repayment was fixed at forty-nine years, the rate being four per cent on the advance. This insured to the purchaser a semi-annual instalment very considerably less than his previous rent.<sup>4</sup> On the other hand, the interest of the

<sup>1</sup> 48 and 49 Vict. c. 73; 51 and 52 Vict. c. 49.

<sup>2</sup> Hansard, vol. ccc, p. 1067. The Duke of Argyll pointed out that only the landlord's interest was unsalable, while tenant right was commanding great prices. Hansard, vol. ccxcix, p. 1356.

<sup>3</sup> Cf. Dillon's boast in 1890: "Owing to boycotting, owing to combination, owing to agitation, there is no purchaser of the land of Ireland except the tenant; . . . if the tenants only wait and are patient and hang back a little, the price will go down to a fair value." Hansard, vol. ccclxiii, p. 1372.

<sup>4</sup> At the prices that prevailed outside of Ulster in the first two years of the act's operation, the reduction amounted to about one-fourth. Cowper Commission's Report, section 21.

treasury was guarded by a provision for a guarantee deposit by any person (in practice, of course, this meant the landlord) of one-fifth of the amount advanced, to be retained on three per cent interest until the purchaser's paid-up instalments should equal the deposit.

This act of 1885 was put on the statute book merely as an experiment,<sup>1</sup> and the limit of advances under it was fixed at £5,000,000. The success of the experiment was very quickly manifested. Within less than a year and a half over five thousand applications for loans had been made,<sup>2</sup> calling for £2,446,946; and by 1888 the appropriation had been exhausted. In introducing a bill to extend the appropriation to £10,000,000, the attorney-general for Ireland stated<sup>3</sup> that 14,338 agreements to purchase had been made under the act, and arrears in the payment of instalments had amounted to only £1100 out of £90,000. Though the Gladstonians and Home Rulers, on political grounds, opposed the proposition to extend the act, the bill was passed December 24, 1888, and continued a successful career till merged in the great act of 1891. Meanwhile the legislation of 1887 had embodied a number of provisions<sup>4</sup> tending to mitigate the difficulties still existing in the process of ready transfer, and in particular had reduced to the terms of the Ashbourne Act the less favorable conditions under which the purchasers under previous legislation were paying their instalments.

The act of 1891 is substantially a further extension of the Ashbourne Act, with modifications and improvements in certain particulars. Purchase and sale are permissive, not compulsory. The advance covers the whole of the purchase money, and the terms of repayment are based on the rate of four per cent for forty-nine years. It is in the matter of security for the treasury that the most novel and striking feature of the measure is to be found. Ever since purchase on a large scale had occupied the attention of the government, the question of securities had

<sup>1</sup> Cf. Salisbury, Hansard, vol. ccxcix, p. 1353.

<sup>2</sup> See Cowper Commission's Report, section 11.

<sup>3</sup> See Annual Register, 1888, p. 207.

<sup>4</sup> 50 and 51 Vict. c. 33, pt. ii.

constituted a most difficult problem. So long as purchasers were numbered only by hundreds, as under the earlier acts, or advances strictly limited, as in the Ashbourne Acts, the strain on the imperial credit was not so important; but in view of any scheme that would involve hundreds of thousands of transactions, the ultimate interests of British fundholders and taxpayers demanded elaborate consideration. This fact had been keenly appreciated by Mr. Gladstone's government, and its two abortive measures had both proposed solutions of the problem which looked to throwing the chief burden on Irish, as distinct from British, taxpayers. The Trevelyan bill in 1884, which contemplated advances up to £20,000,000, provided that defaults in instalments should be made good from the county cess; and to avoid burdening the taxpayers of the counties without their consent, a scheme was proposed by which each advance for purchase was subject to the approval of a local authority of a popular character.<sup>1</sup> In the bill which Mr. Gladstone coupled with his Home Rule Bill in 1886, he made compulsory the purchase by the Irish government of all estates offered by landlords, and lent the imperial credit for the purpose. The first limit set was £50,000,000, but the total amount necessary, it was conceded, would possibly reach £113,000,000. To secure the treasury, he provided a first charge in its favor on the whole revenue of the Irish national government.<sup>2</sup> It was of course not open to Mr. Balfour to adopt this latter form of security. But if he could not charge the revenues of a national Irish government, he was entirely at liberty to fall back upon Trevelyan's principle and use the local funds. This he did, but without the concession of any control by the local authorities.

The scheme of securities in the act is complicated and very ingenious. First, to protect the purchaser against the consequences of bad seasons or other such contingencies that render payment of his instalments impossible, there is instituted a Tenant Insurance Fund, by requiring the payment for the first five years of something more than the normal annuity, the

<sup>1</sup> Cf. Trevelyan's speech, Hansard, vol. cclxxxviii, p. 1510.

<sup>2</sup> Hansard, vol. ccxiv, p. 1793 *et seq.*

amount thus accumulated to be used in case of default. In the second place the treasury is secured by what is called the Guarantee Fund. This consists of (1) certain sums paid annually to the Irish government by the imperial treasury, amounting to about £240,000; (2) imperial contributions for local purposes, including the rates on government property and grants in aid for education, poor relief, *etc.* This second item is called the contingent part of the Guarantee Fund, and is not to be resorted to until every other security is exhausted. The limit of the appropriation for advances is fixed at the capitalized value of this contingent part—estimated to be about £33,000,000. In addition to the securities described there is still the landlord's guarantee deposit of one-fifth of the advance, as in the Ashbourne Act,<sup>1</sup> and another minor item.

In this arrangement, of which I have given by no means a complete account, Lord Salisbury's government believed that it had devised a satisfactory means for using, without risking, British credit in settling the Irish land question. So far as human foresight can effect it, it certainly seems that the British taxpayer is secure, except in the one contingency of a general and persistent strike by the purchasers against the payment of the instalments. But that situation can only arise under circumstances of widespread social and political disorganization, for which no measure of peaceful legislation can provide.

One feature of the law of 1891, which I have not as yet mentioned, was regarded by Mr. Balfour as particularly important and as likely to contribute very much to a simplification of the general situation. This was the part dealing with the so-called "congested districts." The barren regions on the west coast of Ireland, peopled by communities of small tenants who in the best of seasons could not live on the produce of their holdings if no rent whatever were exacted, have always furnished the most harrowing incidents in the repertory of agitation against landlords. That these communities could not logically be included in a general settlement of land ownership, had been realized by Mr. Gladstone in 1886. The Conservative government

<sup>1</sup> See p. 517.

in 1891 acted upon this idea, and after defining "congested districts,"<sup>1</sup> provided them with an entirely distinct scheme of improvement. The purchase clauses were to apply here only in a modified form, and a board was established to look after the peculiar interests of these regions and in particular to devise means for increasing the size of the holdings and for developing local industries that may afford some means of support for the population. That the treatment of these districts was not earlier differentiated from that of the agricultural regions at large, is a striking illustration of the lack of close analysis that has always characterized British attention to Irish affairs. With the distinction clearly drawn, it will be impossible in the future to make the wretchedness of a three-acre tenant in a Donegal hovel the basis of a demand for reduced rent or instalments on a fifty-acre holding in Tipperary; or on the other hand to crush the advocate of peasant ownership for Ireland in general by a sneer at the kind of owner that could be made out of a Connaught cottier.

That the act of 1891 will create peasant proprietorship throughout Ireland, or that such a system, if created, will settle the Irish land question, no one familiar with the history of that question will venture to predict. The statistics of the Ashbourne Acts indicate that the development of the system will be a work of some time. Up to December 31, 1890, there had been 24,223 applications for advances — roughly 5000 annually since the first act went into operation.<sup>2</sup> Considering that there are some 600,000 holdings in Ireland, the end would seem to be far in the future. A suggestive fact is that over half the applications (12,282) were from Ulster. This promises well for the superior character of the purchasing tenants, but as to the settlement of the land agitation, it must be remembered that Ulster has had little to do with the trouble. Default in payment under the purchase act continued to be rare. Only twenty-

<sup>1</sup> A district may be declared to be a congested district when the proportion of the ratable value of the land to the population is less than £1 6s. 8d. per head.

<sup>2</sup> Cf. summary of the working of the Ashbourne Act in *The Times* (London) weekly edition, February 13, 1891.

seven defaulters, had been sold out up to the end of 1890, and in only seven cases was resort necessary to the guarantee deposit to discharge unpaid instalments. It is very doubtful, however, if purchases under the act of 1891 continue at the same rate as under the previous acts, or if instalments are as regularly paid.<sup>1</sup> The new law is peculiarly open to attack on political grounds, and it is not to be supposed that the lesson which the Land League inculcated as to the political utility of the land question will soon be forgotten. The mortgaging of local revenues without the taxpayers' consent opens a tempting issue to the politician. It was questionable policy to offer such an issue to the emotional, undisciplined democracy which the agitations of O'Connell and Parnell have called into conscious existence in Ireland.

WM. A. DUNNING.

<sup>1</sup> At the opening of the session of Parliament in February, 1892, the government was obliged to admit that applications for purchase under the new act had been relatively very few, but Mr. Jackson, the Irish Secretary, explained that the rules for procedure had not yet been formulated. So good a supporter of the government as *The Times* regarded this explanation as unsatisfactory.

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